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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DONALD MCELFISH,

12 Petitioner,

13 v.

14 JEFFREY A. UTTECHT,

15 Respondent.

CASE NO. 19-5397 RJB-JRC

ORDER ADOPTING REPORT AND
RECOMMENDATION

16 THIS MATTER comes before the Court on the Report and Recommendation of U.S.
17 Magistrate Judge J. Richard Creatura. Dkt. 15. In response, the Petitioner filed a pleading
18 entitled “Motion in Response [sic] to Magistrate Cretura [sic] Report and Recommendation”
19 (Dkt. 16), which should be construed as objections to the Report and Recommendation. The
20 Court has considered the Report and Recommendation (Dkt. 15), the Petitioner’s objections
21 (Dkt. 16), and the remaining file.

22 The Petitioner filed this petition, pursuant to 28 U.S.C. § 2254, seeking relief from his
23 state court conviction and 100-month sentence. Dkts. 1 and 7. He acknowledges in his petition
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1 that he has not raised any of the grounds for relief with the state courts, asserting that the state
2 courts do not have jurisdiction over federal constitutional issues. Dkt. 7. On September 16,
3 2019, the Report and Recommendation was filed, recommending that the Court find that the
4 Petitioner failed to exhaust his claims and that the time to exhaust his claims has expired. Dkt.
5 15. It recommends dismissal of the case with prejudice and denial of all pending motions. *Id.*
6 The Report and Recommendation also recommends that no certificate of appealability issue.

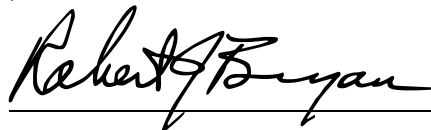
7 The Report and Recommendation (Dkt. 15) should be adopted, all pending motions
8 denied as moot, and the case dismissed with prejudice. No certificate of appealability should
9 issue. The Petitioner's objections are without merit and do not provide a basis to not adopt the
10 Report and Recommendation.

11 **IT IS ORDERED:**

- 12 • The Report and Recommendation (Dkt. 15) **IS ADOPTED**;
- 13 • All pending motions **ARE DENIED AS MOOT**;
- 14 • The case **IS DISMISSED WITH PREJUDICE**; and
- 15 • The certificate of appealability **IS DENIED**.

16 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
17 to any party appearing *pro se* at said party's last known address.

18 Dated this 31st day of October, 2019.

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20 ROBERT J. BRYAN
21 United States District Judge